

D.T.E. 99-61-3

Adjudicatory proceeding regarding the complaint of Jose Rivera concerning the services provided by Qwest Communications.

ORDER OF DISMISSAL

APPEARANCES: Jose A. Rivera
665 Fellsway West
Medford, MA 02155
Petitioner

Damian R. LaPlaca, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street
Boston, MA 02110
For: QWEST COMMUNICATIONS CORP.
Respondent

I. INTRODUCTION

On May 12, 1999, Jose Rivera ("Complainant"), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Consumer Division ("Division") of the Department of Telecommunications and Energy ("Department") alleging that Qwest Communications, Inc. ("Qwest" or "Company") switched his long distance telephone service without authorization.¹ On July 10, 1999, the Complainant filed his Customer Complaint Form authorizing the Department to commence investigating his complaint. In response to the Department's inquiry, on September 28, 1999, Qwest submitted a Letter of Authorization ("LOA") recording as evidence that the switch in the Complainant's telephone service was authorized.

On September 29, 1999, pursuant to notice duly issued, the Division conducted an evidentiary hearing. The Complainant did not appear at the hearing. The Company sponsored the testimony of Maria K. Bertacchi, a tariff analyst. On December 10, 1999 the Company filed a Motion to Dismiss ("Motion") the case claiming that the Complainant did not appear at the hearing to present evidence and that the Department failed to issue an opinion within ten days of the hearing pursuant to G.L. c. 93, § 110.

II. MOTION TO DISMISS

The Company contends that despite having received notice of the hearing, the Complainant failed to appear in support of his complaint (Motion at 1). The Company argues that G.L. c. 93, §§ 108-113 and c. 159, § 12E requires that customers appear at the hearing to give testimony in support of their claims (id. at 1). The Company contends that

¹ Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer's primary interexchange carrier or local exchange carrier is known as "slamming".

since the Complainant did not appear and present evidence of his case, the credibility of his evidence remains in question and it would be unfair to the Company to admit evidence without the ability to authenticate such evidence (id. at 2). Further, Qwest contends that the Department has failed to issue its decision in this matter within ten business days after the hearing violating G.L. c. 93, § 110(j) (id. at 3-4). Due to these two grounds, Qwest argues that the Department should dismiss this complaint (id. at 4).

III. ANALYSIS & FINDINGS

On July 10, 1999, the Division received the Complainant's authorization to investigate the alleged slam (Exh. Qwest-2). As a result of this authorization, the Division notified the parties on September 3, 1999, via regular mail, that a hearing in this matter had been scheduled for September 29, 1999. The notice stated that the Department would consider all information and evidence provided by the Company and the Complainant at that time. The notice further stated that "participation is important for a complete review of the issues in dispute." Lastly, the notice requests the parties to contact the Division if they are unable to attend. No such notification from the Complainant is in the record.

The Complainant failed to appear at the hearing on September 29th (Tr. at 4). At the hearing, the hearing officer continued the hearing for the purpose of sending the LOA to the Complainant for his verification or challenge (Tr. at 30-31). No response from the Complainant is present in the record. The Company filed its written Motion on December 10, 1999. Accordingly, because the Complainant failed to prosecute his case, the case is dismissed and the Company's Motion is affirmed. In light of the absence of the Complainant, the Department need not address the timing issues raised by the Company in its Motion.

IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: that the adjudicatory proceeding regarding the complaint of Jose Rivera concerning the services provided by Qwest Communications is DISMISSED.

By order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeals as to matter of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such a petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such a petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).